

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

KIMBERLEE WILLIAMS, :
individually, as personal : Civil Action No.
representative of the Estate : 2:11-cv-01754-JLL-JAD
of Charles L. Williams, :
deceased on behalf of said :
estate, and as representative :
of others similarly situated, :
et al., :
:
Plaintiffs, :
:
Newark, New Jersey
vs. : Wednesday, June 7, 2017
:
3:32 p.m.
BASF CATALYSTS LLC, et al., :
:
Defendants. :

TRANSCRIPT OF STATUS CONFERENCE
BEFORE THE HONORABLE JOSEPH A. DICKSON
UNITED STATES MAGISTRATE JUDGE

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1 (Conference commenced at 3:32 p.m.)

2 THE CLERK: Judge, we're on the record.

3 THE COURT: Do we have somebody on the phone?

4 THE CLERK: Yes.

5 THE COURT: Who is that? Mr. -- who is on the phone?

6 It's one of you guys.

7 MR. PLACITELLA: Mr. Pollock.

8 MR. COREN: Jeff Pollock.

9 THE COURT: Mr. Pollock? Okay. Hello?

10 MR. POLLOCK: Good afternoon, Your Honor. Jeff

11 Pollock. How are you?

12 THE COURT: I'm good. How are you?

13 All right. This is the matter of Williams versus

14 BASF Catalysts, LLC, et al., Docket Number 11-1754.

15 May I have appearances, please?

16 MR. PLACITELLA: Good morning, Your Honor. Or good

17 afternoon. Chris Placitella on behalf of the plaintiffs.

18 THE COURT: Good afternoon.

19 MR. COREN: Good afternoon, Your Honor. Mike Coren

20 for plaintiffs.

21 THE COURT: Good afternoon.

22 MR. SOKOLOVE: Rob Sokolove for Allen Rothenberg Law

23 Firm.

24 THE COURT: Okay. Good afternoon.

25 MR. ASSAF: Gene Assaf for defendant BASF.

Colloquy

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1 THE COURT: You know what? Let me just -- I'm sorry
2 for interrupting you, Mr. Assaf, but just so the record is
3 clear, and Mr. Pollock is joining us by telephone; correct,
4 Mr. Pollock?

5 MR. POLLOCK: Yes, Your Honor. Thank you.

6 THE COURT: All right. Thank you.

7 MR. FARRELL: Good afternoon, Your Honor. Peter
8 Farrell for BASF.

9 THE COURT: Okay.

10 MR. BRESS: Good afternoon. Daniel Bress for BASF.

11 MR. QUINN: And good afternoon. This is Justin Quinn,
12 also for BASF.

13 THE COURT: Okay.

14 MR. VILLA: Good afternoon, Your Honor. Jon Villa
15 for the Cahill defendants.

16 THE COURT: Okay.

17 MR. MARINO: Good afternoon, Your Honor. Kevin Marino
18 for defendant Arthur Dornbusch.

19 MR. BOYLE: Good afternoon, Your Honor. John Boyle
20 for defendant Arthur Dornbusch.

21 THE COURT: Okay.

22 MR. TUNIS: Good afternoon, Your Honor. Eric Tunis
23 for Thomas Halket.

24 THE COURT: Good afternoon.

25 MR. BLATT: Good afternoon, Your Honor. David Blatt

Colloquy

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1 for the Cahill defendants.

2 MR. RYAN: Good afternoon, Judge. Robert Ryan,
3 Connell Foley, Cahill defendants.

4 THE COURT: Okay. And nobody else wants to make an
5 appearance? We've got other people in the courtroom. I take
6 it that --

7 MS. DALMUT: Elizabeth Dalmut for BASF.

8 THE COURT: Okay.

9 MR. KOTT: Good afternoon, Your Honor. I am David
10 Kott, K-O-T-T, McCarter and English, for the third-party
11 witness Johnson & Johnson.

12 THE COURT: Okay. Anybody else?

13 All right. We are here today for a status conference
14 called by the Court. And if you're prescient and/or
15 observant, you may have noticed that Judge Brown has walked
16 into the courtroom. Judge Linares has determined that this
17 case calls for a special master and he's made a determination
18 to appoint Judge Garrett Brown as the special master in this
19 case, so that's what I want to talk to you about today. And I
20 had an order prepared and signed by Judge Linares, which we're
21 going to distribute.

22 I am looking -- before I -- here. This my copy. I
23 knew I had a copy.

24 I haven't put it on the docket yet, because there are
25 two quick issues that I wanted to discuss.

1 (Discussion with clerk, off the record.)

2 THE COURT: Rule 53, Federal Rule of Civil Procedure
3 53, which allows for the appointment of masters in cases, at
4 subsection (b), requires the Court to consider any objections.
5 So, I have no idea whether anyone here today or anyone on the
6 phone will have an objection and, at the risk of pressing the
7 issue, does anyone either have an objection or does anyone
8 want to reserve the right after their review of the order to
9 pose an objection?

10 MR. PLACITELLA: I would just reserve the right just
11 to review the order.

12 THE COURT: Okay.

13 MR. ASSAF: No objection, Your Honor.

14 THE COURT: Okay. So, Mr. Placitella, it's well
15 within your right to do that. What -- so then, what I'd like
16 to do is ask you -- because if you look at the last page, I've
17 left some blank spaces. Is five days a sufficient amount of
18 time?

19 MR. PLACITELLA: Absolutely.

20 THE COURT: So, can I say June 13th?

21 MR. PLACITELLA: Yes. Of course.

22 THE COURT: If Mr. Placitella makes an objection or
23 if anyone else makes an objection, then there's -- I want --
24 we want to have any responses filed -- June 13th is a Tuesday.
25 Can we have responses filed by Friday, the 16th?

Colloquy

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1 MR. ASSAF: Yes, Your Honor.

2 THE COURT: Now, Judge Brown is here and he's willing
3 to start work right now. So I want to make a suggestion and
4 then I'll hear from everybody on this, including Judge Brown.

5 He cannot really start work until the -- it's actually
6 approved by JAMS; correct?

7 JUDGE BROWN: Well, no. The point is, I am not going
8 to start work until I actually have the retainer that JAMS
9 receives, which (indiscernible) split it up (indiscernible) et
10 cetera. I can preliminary talk at least (indiscernible)
11 subject to, you know, no objection and subject to a retainer
12 having been paid, et cetera, et cetera. Let's figure out how
13 we're going to proceed (indiscernible).

14 THE COURT: It's a matter of language. I said start
15 working. Judge Brown in a better way said he can start to
16 preliminarily have discussions. I think that's a good idea.
17 And frankly, Mr. Placitella, maybe it will be helpful for you
18 making a decision whether or not you want to file an objection.

19 MR. PLACITELLA: I have no problem with that, Your
20 Honor.

21 MR. RYAN: Judge, Bob Ryan from Connell Foley. Just
22 in the spirit of full disclosure, I believe I may be wrong
23 that Mr. Murphy once worked at Connell Foley, so I just wanted
24 everybody to be aware of that.

25 THE COURT: Okay.

Colloquy

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1 MR. MURPHY: Yes, sir, and I --

2 THE COURT: No, no. I haven't identified Mr. Murphy.
3 Mr. Murphy is, I think, an employee or is consulting or
4 contracted with JAMS. And he's an attorney who -- well, some
5 of us know. He's been here in the courthouse before and I
6 think he actually clerked in this courthouse for a few years.
7 Or in another courthouse in this district. But he works with
8 Judge Brown on cases like this and I think it would be
9 proposed that he work with Judge Brown.

10 So, having said that, that was -- that con -- that
11 potential conflict was reviewed by Mr. Murphy and thank you
12 for pointing it out.

13 Anything else? Are there any questions in general
14 before I actually -- or anything that we need to talk about?
15 Because, frankly, almost everything that we have been talking
16 about, I've got this list that was prepared by I think Mr.
17 Quinn of the pending motions and I didn't get anybody
18 objecting to that, yes, these are the actual motions. And
19 this is coincident to our list of disputed matters and/or
20 motions.

21 So, I thought -- it says these will be handed over to
22 Judge Brown, assuming that the order is not vacated by Judge
23 Linares. I didn't want to have to waste anybody's time
24 telling you what I think about where this is going to go.
25 Okay?

1 So, but the time could be better spent having those
2 preliminary discussions with Judge Brown and I think my jury
3 room -- my conference room may be more comfortable than the
4 jury room, actually.

5 JUDGE BROWN: Do we have space for everybody in the
6 conference room? (Indiscernible)

7 THE COURT: Well, you -- you know what? You can stay
8 right here. I mean, you can stay here.

9 Now, here's the thing. There are people here, I
10 noticed, in the gallery. Is it -- are they all clients and/or
11 connected with this case?

12 UNIDENTIFIED MALE: I'm not. I'm a reporter.

13 THE COURT: Okay. Well, then I'll leave it to the
14 parties as to whether they want you to sit in on a private
15 conversation. Right now, we're on the record.

16 Yes, Mr. Assaf?

17 MR. ASSAF: For the record, Gene Assaf on behalf of
18 BASF.

19 Yes, Your Honor, I understand that there is a chart
20 of the various discovery motions and, upon my quick review of
21 Judge Linares's order, I see that they will be referred now to
22 Judge Brown. I think the -- including the sanctions motion,
23 which I also see noted at the end that he has the authority
24 over the proposed sanctions motion.

25 In terms of outstanding issues though, Your Honor, I

1 do think there's a non-discovery issue that's still
2 theoretically in front of you that you said was not ripe yet,
3 but you wanted to hear again. We raised it in October. The
4 issue of early class motion. We raised it again in January of
5 2017 and last week Mr. Placitella now filed a piece in which
6 he shifts again, in terms of his class theory. Now he says it
7 is -- his words, not mine -- present intention to file a class
8 motion that is an issues-based class under Rule 23(c)(4).

9 Which, Your Honor, if that's going to happen, again,
10 I think it then makes your inclination to have an early class
11 motion all the more important, and now that we're having
12 discovery issues with Judge Brown, because 23(c)(4) cannot be
13 used to circumvent (b)(3) and, in particular, predominance.
14 And, Your Honor, the Gates versus Rohm and Haas case from the
15 Third Circuit, 655 F.3d 255, makes it very clear.

16 So, if there is going to be -- we felt as though the
17 class cert issue has moved along. You'll remember the very
18 first hearing, Your Honor. You asked Mr. Placitella: Are
19 people who never filed cases in your class? He said: I don't
20 know I have to think about that. And we're now years into
21 discovery and we still don't have pen to paper on that issue.

22 We have a putative class of people from Mississippi,
23 thousands of putative cases, there's no class rep from
24 Mississippi. There are no lawyers from Mississippi regarding
25 the alleged representations. There are thousands of people in

1 his putative class, I think, who have asbestosis. There is no
2 class rep with asbestosis.

3 So, if he's going to have a class, again, Your Honor,
4 I think now, compared to October of 2016, is the time for him
5 to start putting pen to paper as to who is in the class and
6 what's the basis of his class, because, if it is a (c)(4)
7 class, then we're going to be back here in very short order
8 and we will show to you conclusively that that's not a basis
9 for class certification, which will obviously impact the
10 discovery issues in this case.

11 So, I would renew our request, Your Honor, that you
12 ask Mr. Placitella to file a class cert motion identifying his
13 basis for class cert and the people who are purportedly in
14 that class, whether they're from Mississippi, when they were
15 injured, how they were injured, what their injuries are. So,
16 I would raise that issue. I think that's probably outside
17 Judge Brown's order, but I would raise with you, since we're
18 here.

19 THE COURT: Okay.

20 MR. POLLOCK: And, Judge, this is Jeff Pollock. Can
21 I jump in for a second?

22 THE COURT: Mr. Placitella just got up. Mr.
23 Placitella, can Mr. Pollock --

24 MR. POLLOCK: Go ahead, Chris.

25 MR. PLACITELLA: I will defer to Mr. Pollock, since

1 he is closer to you.

2 MR. POLLOCK: Chris, go ahead.

3 THE COURT: No, he wants you to go first, because
4 you're closer to me.

5 MR. POLLOCK: Okay. I just have two questions,
6 procedurally. And obviously, you know, Garrett -- Judge Brown,
7 being the former chief judge, obviously has the skills and
8 ability to do exactly what you want him to do.

9 Procedurally, with the -- since we have one core
10 question up front, as I see it, which is what is and is not
11 discoverable. Obviously, Gene Assaf and company on one side
12 and Chris and I on the other, disagree on that fundamental
13 issue, what is and is not discoverable and I think that arises
14 out of what is and is not at issue. As I see it, and you may
15 disagree with me, that's really a call that has to be made I
16 think by the Court and then, at that point, Judge Brown can
17 direct us and make sure we all behave.

18 So, I'm just wondering how the -- how do you see this
19 working, procedurally? Because the first -- I think the first
20 issue is: are -- is BASF entitled to discovery of the
21 underlying cases? Obviously, BASF believes strongly they are,
22 we believe strongly they are not. So, I am just trying to get
23 a sense of how you see this working out procedurally.

24 THE COURT: Procedurally -- and I think the order
25 implements this -- Judge Linares and I still -- and I talked

1 about this to Judge Linares and I both anticipated that Judge
2 Brown would address that issue. I think Judge Brown is
3 prepared to talk about which issues should be addressed first
4 and the order of those issues once we break here.

5 But to answer your question, that -- I am well aware
6 of that issue and procedurally and process wise, that was
7 going to part of Judge Brown's duties as the special master.

8 MR. POLLOCK: Thank you, Your Honor.

9 MR. PLACITELLA: Thank you, Your Honor.

10 As I said previously, class certification is
11 premature. Not a single deposition of any defendant has been
12 taken. There is outstanding discovery related to Johnson &
13 Johnson that would bear upon that. We believe that there are
14 documents being wrongfully withheld under claim of privilege
15 that would directly bear on the issue of class certification.
16 We have no problem, once we get through some of that,
17 addressing the issue.

18 I know Mr. Assaf wants to teach me how to practice
19 law in whatever order he thinks I should do things. But,
20 respectfully, we are the -- it's our case and we have a right
21 to get the discovery, and that's why Judge Linares and Your
22 Honor have asked Judge Brown to step in, and I think at some
23 point a few months down the road, Judge Brown can give you
24 advice and Judge Linares advice and counsel as to whether he
25 thinks, based on what he knows, that -- you know, whether it's

1 ripe at that point at time.

2 I would raise the following: To the extent that
3 Judge Brown would be involved in this case -- I've raise this
4 before and I'll raise it again -- because the issues so
5 overlap with discovery going on in the state court, that there
6 will be coordination between whatever Judge Brown does and
7 whatever is going on in the state court. There are identical
8 issues, identical depositions noticed, identical requests for
9 admissions.

10 At the very least, I believe that Judge Brown should
11 have a conversation with the Superior Court Middlesex County.
12 There is a long history here in the state of New Jersey of the
13 Middlesex County Superior Court that handles asbestos cases
14 having coordinated proceedings and conversations with the
15 Court here in this very courthouse, going all the way back to
16 Judge Ackerman and then Judge Cowen when Judge Keefe was
17 involved and then Judge Hamlin and it's worked very well
18 before and, frankly, I think it will save everybody a lot of
19 time and a lot of money.

20 Thank you.

21 THE COURT: All right. So, there are two issues you
22 raised. One is the response to the timing of the class
23 certification motion.

24 MR. PLACITELLA: Correct.

25 THE COURT: And essentially your position is it's not

1 time, because discovery has not given you enough.

2 MR. PLACITELLA: Correct. It's not ripe.

3 THE COURT: It's not ripe. Okay. And the second
4 issue is the coordination issue with the state court with the
5 parallel issues.

6 MR. PLACITELLA: Well, the state court in the Sampson
7 case and other -- and -- and the Ross case, for example, the
8 allegations are very similar. Fraudulent concealment,
9 spoliation. There has been -- it's no secret there has been
10 an opinion issued by Justice Stein that's being considered by
11 the superior court. That took --

12 THE COURT: That's still under consideration?

13 MR. PLACITELLA: It's under consideration. We are
14 hopeful we will get some determination soon, because the
15 superior court has added a second asbestos judge, which has
16 allowed Judge Viscomi to get rid of some of the backlog she
17 had on motions, because of just the crushing burden of pending
18 motions. But over the last number of weeks, you know, dozens
19 and dozens of backlogged motions have been handled, because
20 there is now more judicial resources. So, we're hopeful we're
21 going to get a decision one way or the other. That will
22 impact, obviously, I think, on what is happening here and I
23 think Judge Brown should know.

24 I will repeat that Judge Viscomi has said that
25 Justice Stein's opinion could be shared with this Court. This

1 Court has taken a position, understandably, that you weren't
2 ready to look at that at this time, because that opinion,
3 although addressed, had been in possession of Cahill and BASF,
4 has not been shared with the counsel for Arthur Dornbusch or
5 Mr. Halket, and it was your position -- and I understand it
6 and I'm not rearguing it -- that until such time as that
7 opinion would be available to Mr. Marino, it would -- it
8 should not be viewed here.

9 But we can't do this in a vacuum. Years have been
10 spent on the very issues that are going to be confronted here
11 and it, to me, makes all the sense in the world, at a minimum,
12 for Judge Brown and/or yourself to have a conversation with
13 the superior court and find out where things stand and how and
14 if those efforts can be coordinated so as not to, you know,
15 expend judicial resources unnecessary -- unnecessarily.

16 THE COURT: You know, I think it would be -- and I
17 will hear from you in a minute, Mr. Assaf. But I think it
18 would be helpful if you could more finely tune that in a
19 letter to the Court as to what issues should we discuss. I
20 mean, there are -- you know, --

21 MR. PLACITELLA: I'll be happy to do that.

22 THE COURT: And then -- and Mr. Assaf could, of
23 course, respond. Unless you think we should discuss this case
24 with the superior court, as well.

25 Mr. Assaf, do you agree or do you --

1 MR. ASSAF: Your Honor, I think there -- for example,
2 if there is going to be a deposition on what I had proposed
3 before on where the documents have been found, I think that's
4 worth a discussion with Judge Brown in terms of saying, okay,
5 is there a duplication of effort here and can we get some
6 efficiencies out of it?

7 But what I don't think should happen is what's
8 happening now, was when we were here last time, Mr. Placitella
9 had discovery come to a screeching halt and the very next day
10 initiated waves of discovery in the state court. And so I
11 don't think it should be used tactically and I think we should
12 have a discussion with Judge Brown about how we should get
13 some efficiency out of the process. And especially on this
14 document issue.

15 THE COURT: Well, but I want to stick with one thing.

16 MR. ASSAF: Sure.

17 THE COURT: I think Mr. Placitella -- and I'm not
18 going to speak for you, Mr. Placitella. Correct me if I am
19 not getting what you are talking about. But there are a lot
20 of things going on in the state court.

21 MR. PLACITELLA: Correct.

22 THE COURT: And there are a lot of things going on
23 here or about to go on here, --

24 MR. PLACITELLA: Correct.

25 THE COURT: -- depending on how you look at it.

1 MR. PLACITELLA: Correct.

2 THE COURT: You are talking about the federal court
3 and Judge Brown, assuming he's appointed -- excuse me --
4 coordinating with the state court judges to make sure that we
5 don't render inconsistent rulings or make duplicate work. I
6 mean, it's --

7 MR. PLACITELLA: Correct.

8 THE COURT: I'd like for you to fine tune that in a
9 letter.

10 MR. PLACITELLA: Your Honor, I'm happy to flesh it
11 out in a letter, Your Honor.

12 THE COURT: Okay.

13 MR. PLACITELLA: It sounds like Mr. Assaf is not
14 totally --

15 THE COURT: Well, that's why I'd like to get --

16 MR. PLACITELLA: -- against what I am saying, so --

17 THE COURT: I'd like to -- so, it's always easier for
18 me to see it --

19 MR. PLACITELLA: Okay.

20 THE COURT: -- in writing, so it can be addressed.

21 MR. PLACITELLA: I'm happy to do that.

22 THE COURT: Okay. And then Mr. Assaf you can -- you
23 can respond.

24 MR. ASSAF: Yeah. And to be clear, Your Honor, what
25 -- yes. I'd like to see it in writing, but let's talk about

1 something that's I think pretty easy. If there is going to be
2 a witness deposed, whether they should be cross-noticed in the
3 cases, so they don't have to sit for depositions seriatim, --

4 THE COURT: Right.

5 MR. ASSAF: -- that's something we should discuss and
6 I would hope we, if we aren't able to agree on it, that Judge
7 Brown would make us see the good sense in doing that.

8 THE COURT: Well, I think -- I am going to guess Mr.
9 Placitella would agree that we take one dep --

10 MR. PLACITELLA: We're on the same page.

11 THE COURT: -- one deposition.

12 MR. PLACITELLA: We're on the same page. So, what
13 happened is --

14 THE COURT: It may be a 40-day deposition, but it
15 will be one deposition.

16 MR. PLACITELLA: Right. So, for example -- for
17 example, just to give -- to put some meat on those bones, we
18 asked for -- they said -- they walked in here and said we
19 didn't destroy any documents, we want to bring a motion to
20 prove it. We said, okay, Judge, we would like a deposition on
21 that issue. And because when we took the deposition in the
22 state court, their corporate representative admitted that
23 documents were missing.

24 Mr. Assaf stood up before Your Honor and said, well,
25 Judge, that was an old deposition that really -- you know,

1 it's stale. So, I went back to the state court and issued the
2 same notice and said, well, they told Judge Dickson it was
3 stale, so now I need to go back and find out on the record
4 exactly what they say they found since I took the deposition.

5 They then objected to that happening in the state
6 court. The special master in the state court, whom I am
7 hoping Judge Brown will get to know, recommended that he
8 deposition go forward. That was then appealed by BASF. BASF
9 -- and then the preliminary decision from Judge Viscomi was,
10 no, the deposition should go forward. BASF asked for oral
11 argument. They came into court and they said, well, maybe we
12 will put up somebody for a deposition, but we have the meet
13 and confer on the scope of that deposition, which meet and
14 confer is scheduled for tomorrow.

15 That issue is a complete overlap and there may be
16 issues, frankly, that we would put before Judge Brown,
17 assuming the order is permissible, on privileged documents
18 that may bear on some of these issues, but we don't have to go
19 over that now. I am just saying that we're at a point where
20 there is a lot of work to do, but there is no reason to redo
21 two years of work done by Justice Stein.

22 THE COURT: Okay. I understand.

23 All right. So, I'm going to get a letter and, Mr.
24 Assaf, you'll respond.

25 MR. ASSAF: Correct, Your Honor.

1 And I want to come back in terms of we will do a
2 letter, we'll respond. I am sure the individual defendants
3 will have some process issues, since they weren't part of the
4 process and aren't part of the cases, and they could weigh in
5 on that.

6 But I would like to come back to this class cert
7 motion, which, again, I --

8 THE COURT: How are we going to get there, Mr. Assaf?

9 MR. ASSAF: I'll tell you how, Your Honor. I think,
10 we -- all I want is a motion -- which can be amended, okay?
11 For good cause, if he finds other discoverable issues. But
12 I'd like to know what I'm shooting at to begin with. Okay?
13 What is the class? Who is in the class? Are they Ohio
14 people? Are they Mississippi people? Are they asbestosis
15 victims? What does it look like today, based on what he
16 knows?

17 On April 4, 2015, Mr. Placitella stood up in front of
18 Your Honor and said I would like a trial date in three days,
19 I've been living this case, I know this case. And now he's
20 telling you today he really doesn't understand what his class
21 even looks like yet. I don't think that's the case and that's
22 why he keeps shifting in terms -- all I want him to do is put
23 together an eight to ten piece -- page what rule he's going to
24 move under, how he thinks it's going to look, and if he finds
25 facts later on that changes his mind, then he comes in and

1 says, Your Honor, I didn't know these facts at the time.

2 But at least let me know whether people from
3 Mississippi are in it. And I'll tell you why it matters. So,
4 if people from Mississippi are in this case, I want to issue
5 subpoenas to the companies that settled with the Mississippi
6 plaintiffs and see what the Mississippi plaintiffs said. Or
7 subpoena the law firms. Or at least find out what their
8 injuries were. If they are not in the case, it changes the
9 case dramatically.

10 So, that's why I'm saying, Your Honor, he reserves
11 all of his rights to amend it, but let him tell us what rules
12 he's going to move under and what the basis of the rules are.

13 MR. POLLOCK: Your Honor, may I respond briefly to
14 that?

15 THE COURT: Sure.

16 MR. POLLOCK: What Mr. Assaf just said is precisely
17 the problem I identified four minutes ago. His core premise
18 is the underlying cases are directly relevant to the cause of
19 action here. Our core position is the Third Circuit said
20 we're not retrying those cases. So, what he is trying to do,
21 as he just said 30 seconds ago, is to reopen -- he wants to
22 subpoena those companies, those plaintiffs, those people.

23 The question as we perceive it -- and, obviously,
24 Judge Brown will be the one who will be the arbiter of this
25 initially and then it may go on to others -- is the question

1 of whether it is BASF's actions. Did they lie steal, cheat,
2 hide information? The underlying plaintiffs' cases, as the
3 second-to-the-last paragraph of the Third Circuit's decision
4 clearly articulates, and we all read the language, said that's
5 not relevant, but that's exactly what he's trying to make
6 relevant.

7 So, that's where I think we need -- that's why I was
8 -- I'm concerned about that starting point. We don't
9 (indiscernible), we're not going to agree upon it today, but
10 we have to have an answer to that question, because that
11 dictates everything else.

12 THE COURT: Okay. I understand your point.

13 Mr. Placitella?

14 MR. POLLOCK: Thank you, Judge.

15 MR. PLACITELLA: Yes, Your Honor.

16 MR. POLLOCK: Thank you.

17 THE COURT: Mm-hmm.

18 MR. PLACITELLA: The class is framed in the
19 complaint. The Third Circuit said we can proceed. We don't
20 have any discovery by way of depositions. There are documents
21 that we believe go directly to the issue that are being
22 withheld. It's premature.

23 I understand that Mr. Assaf would like to instruct me
24 about how to represent my clients, but with all due respect,
25 despite the lessons trying to be taught, we have a game plan

1 that we would like to execute. Thank you.

2 THE COURT: I don't view Mr. Assaf's arguments as
3 that, Mr. -- with all due respect, Mr. Placitella. I view his
4 arguments as trying to understand really the breadth of what
5 this case is going to be all about. But I also understand
6 what Mr. Pollock said and I understand what you're saying.

7 What I want to do is see where this shakes out with
8 Judge Brown. He's going to have a discussion with all of you
9 in about two minutes. And I'm going to see how that shakes
10 out and where that comes from. Judge Brown will then talk to
11 me and/or Judge Linares and -- and because I'm trying to think
12 process on this. I mean, you're essentially asking me to
13 order a date by which the class motion -- the class mot --
14 yeah, the motion for class certification has to be filed.

15 MR. ASSAF: Slightly different, Your Honor. I think
16 it would be the first --

17 THE COURT: You'd take less than a motion? You'd
18 take just a description?

19 MR. ASSAF: Yeah, I'd take a description --

20 THE COURT: So, you want me to order a date by which
21 they describe what the class is?

22 MR. ASSAF: Correct, Your Honor. And with good cause
23 they could amend or file a motion later on for that. And as
24 you know, Your Honor, the trend in district courts is actually
25 for local rules requiring it within 30 days of filing the

1 complaint. So, I don't think there's any prejudice here. He
2 could tell us what he thinks.

3 And again, Your Honor, I urge you to look at the very
4 last brief Mr. Placitella filed on the sanctions issue where
5 he now says that the class --

6 THE COURT: Which one would that be? The very last?

7 MR. ASSAF: It -- it's the class --

8 THE COURT: I mean, it seems there's one every day.
9 The one that came today or the one that came yesterday?

10 MR. ASSAF: I think it's the one that came -- it's
11 the one that came Monday. But it's the classic -- it's where
12 he says I now am -- I'm now envisioning my present intention
13 is now to do a class-based issue. Which means what he wants
14 to do is say I am just going to say misstatements, but not
15 reliance and not damages. And that's not allowed under Third
16 Circuit precedent. And so, if he wants to do that, we should
17 know sooner rather than later.

18 THE COURT: Well, why don't -- maybe it will be
19 helpful not to keep piling on letters and letters, but maybe --
20 have you responded to that letter?

21 MR. ASSAF: Yes.

22 THE COURT: Okay. Then I'll look at that letter and
23 your response.

24 MR. ASSAF: Okay.

25 THE COURT: Okay.

1 MR. ASSAF: Great.

2 THE COURT: Mr. Marino, did you have something?

3 MR. MARINO: Just very briefly, Your Honor. I think
4 the Court is aware we, on behalf of Mr. Dornbusch, had no
5 involvement in the state court actions. So, it isn't just a
6 matter of seeing the opinion. Obviously, this whole notion of
7 coordination is problematic. I think what probably makes most
8 sense is, when Mr. Placitella files his papers and Mr. Assaf
9 is going to respond, we will respond as well and I assume that
10 Mr. Tunis, on behalf of Mr. Halket, will as well, if that's
11 all right with the Court.

12 THE COURT: And maybe --

13 MR. TUNIS: That's correct, Your Honor.

14 THE COURT: I don't want to go too far out on a limb
15 here, but it seems to me that if there's going to be
16 coordination, there has to be coordination with all of the
17 parties.

18 MR. ASSAF: Which is a --

19 MR. MARINO: You would think, Your Honor, and --

20 MR. ASSAF: Which is a -- which is a problem, Your
21 Honor.

22 THE COURT: Well, it's a --

23 MR. MARINO: It's a major -- it's a major problem for
24 us.

25 THE COURT: It's a problem now, but maybe the problem

1 -- if -- if we -- if this Court decides that there should be
2 coordination, then the state court also has to decide there
3 should be coordination.

4 MR. MARINO: Well, our concern, Your Honor, --

5 THE COURT: Or there's no coordination. And if the
6 state court decides that there's going to be coordination,
7 they have to understand that there are parties here that need
8 to be coordinated with.

9 MR. MARINO: Well, you know what I envision, Your
10 Honor, is Mr. Placitella being unable to get certain discovery
11 in this Court, where we are all present, and then repairing to
12 the state court, where some of us are not present.

13 THE COURT: Well, yeah, but he's the one who brings
14 up the coordination problem. He -- so, I think he's trying to
15 solve that problem --

16 MR. MARINO: No, I'm --

17 THE COURT: -- before it becomes a problem.

18 MR. MARINO: Oh, I -- well, --

19 THE COURT: I understand the problem, too.

20 MR. MARINO: -- to the extent it hasn't become a
21 problem already, but --

22 THE COURT: I agree.

23 MR. MARINO: -- but I would like the opportunity,
24 with the Court's permission --

25 THE COURT: You -- well, absolutely.

1 MR. MARINO: -- to respond.

2 THE COURT: The bottom line is, you wanted to respond
3 to it. Absolutely.

4 MR. MARINO: All right. Thank you, sir.

5 THE COURT: Of course. All right?

6 MR. ASSAF: I have one more non-discovery issue.

7 MR. PLACITELLA: I thought you only had one.

8 THE COURT: Yeah. What, are you Columbo? I'm sorry.
9 Go ahead, Mr. Assaf. I apologize for --

10 MR. ASSAF: That's okay.

11 THE COURT: That was a tongue-in-cheek joke.

12 MR. ASSAF: No, no, that's -- eh, medium --

13 THE COURT: But I want the transcript to reflect --

14 MR. ASSAF: It was a medium joke.

15 THE COURT: -- that I was teasing. Five years from
16 now, when this case is still going on and somebody says that I
17 said something nasty to you.

18 MR. ASSAF: Maybe by that time we'll have a class
19 cert motion.

20 THE COURT: Okay.

21 MR. ASSAF: So -- and, Your Honor, on this issue I am
22 wondering if you and Mr. Placitella and I may have a sidebar,
23 because I want to know whether I should raise it here in open
24 court. It's a sensitive issue and I just -- I would prefer to
25 raise it just with Your Honor and Mr. Placitella first and as

1 opposed to raising it on the record, if that's okay with Mr.
2 Placitella.

3 THE COURT: Okay.

4 UNIDENTIFIED MALE: Can we assume that doesn't --

5 MR. ASSAF: Correct.

6 UNIDENTIFIED MALE: -- have anything to do with --

7 MR. ASSAF: Correct.

8 THE COURT: Does anybody object to Mr. Assaf and Mr.
9 Placitella having an off-the-record sidebar with me?

10 MR. SOKOLOVE: It's kind of hard to know if you don't
11 know what the subject matter is.

12 THE COURT: Yes. Mr. Assaf, that's --

13 MR. ASSAF: It doesn't have anything to do with other
14 counsel. It only has to do with Mr. Placitella and BASF.

15 THE COURT: Okay. Let's go off the record.

16 (Off record from 4:05:57 to 4:06:02 p.m.)

17 THE COURT: Hold on.

18 THE CLERK: Just one second.

19 MR. SOKOLOVE: I'd like to just -- I'm sorry.

20 THE CLERK: Now we're on.

21 MR. SOKOLOVE: While we're on the record, can I --
22 can I just raise one issue? Right? I represent the kind of
23 the 1,800-client elephant not in the room -- or may be in the
24 room, I'm not sure. We represent, you know, the Rothenberg
25 files.

1 THE COURT: Right.

2 MR. SOKOLOVE: We're kind of -- we're in the cross --
3 you know, we're in the crossfire between all this. We may be
4 in this case, we may not be. Of course, we can't find our
5 files yet. And I know Your Honor made a ruling that, frankly,
6 we were a little confused by.

7 I just want to kind of raise for the record that
8 right now it's the Rothenberg third-party kind of position
9 that we're okay to be doing nothing right now. Because as
10 long as the underlying discovery dispute as to what is
11 discoverable at this point is still alive, we shouldn't have
12 to be going and trying to find the errors, probable errors, of
13 1,800 people who were middle-aged men 25 years ago and not try
14 to find their errors, to see if we can pull the files, to see
15 if we represent them. And that's kind of the position we're
16 in right now.

17 So, I just want to make it clear that while this
18 discussion is taking place, there are these third-party --
19 perhaps parties -- involved in this that are sitting waiting
20 to determine what we should do. And I just want that on the
21 record. I -- I -- because we're kind of parties, but we're
22 not yet, but we can't proceed with the discovery as long as
23 these discovery disputes are taking place and I just want that
24 on the record and I -- you know, I want both judges to
25 understand we're kind of caught in that middle right now.

1 THE COURT: Okay.

2 MR. SOKOLOVE: Thank you, Your Honor.

3 THE COURT: What -- I thought that what we were doing
4 is putting you on hold.

5 MR. PLACITELLA: That was my understanding.

6 MR. SOKOLOVE: Well, that -- that was the
7 understanding, although we did move to quash the subpoena and
8 it -- and --

9 THE COURT: Did I deny it without prejudice or did I
10 terminate it?

11 MR. SOKOLOVE: Well, you denied the motion without
12 prejudice.

13 THE COURT: Without prejudice, because it was --
14 because I am trying to -- that was docket control. I'm trying
15 to get it off the docket. That was all.

16 MR. SOKOLOVE: Okay.

17 THE COURT: I --

18 MR. SOKOLOVE: That's the way we read it and, quite
19 frankly, we assumed that since we didn't get a phone call the
20 very next day --

21 THE COURT: I thought I made that clear.

22 MR. ASSAF: I think you did, Your Honor.

23 MR. SOKOLOVE: Okay. Well, then --

24 THE COURT: Okay.

25 MR. SOKOLOVE: -- then we're all good for now.

1 THE COURT: All right.

2 MR. SOKOLOVE: For now. Thank you, Your Honor.

3 THE COURT: Okay. Anything else?

4 All right. We're going to break now and we'll have --
5 and I want everybody to sit down with Judge Brown.

6 With all due respect to the press, somebody should
7 decide whether or no they want the press in the room while
8 you're having an off-the-record conversation. Okay? I don't --

9 MR. ASSAF: I think --

10 THE COURT: I don't think I'm asked to take a position
11 on that.

12 MR. ASSAF: Your Honor, my practice has been, as the
13 press, for example, this would be akin to Judge Brown
14 supervising a deposition and the press doesn't have normal
15 access to that. And these are discovery issues, some of which
16 will be covered by protective orders already entered in the
17 case. So, with all due respect, huge fan of the First
18 Amendment and I'm sure the reporter back there, but I don't
19 think it would be appropriate, in terms of full and frank
20 discussion of confidential information and discovery issues.

21 THE COURT: Okay. Let's go off the record.

22 (Off record from 4:09:18 to 4:09:18 p.m.)

23 THE COURT: -- to Mr. Placitella?

24 MR. PLACITELLA: I defer to Your Honor.

25 THE COURT: Okay. Thanks. Off the record.

1 (Conference adjourned at 4:09 p.m.)

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4 C E R T I F I C A T I O N

5 I, TERRY L. DeMARCO, court-approved transcriber,
6 certify that the foregoing is a correct transcript from the
7 electronic sound recording of the proceedings in the above-
8 entitled matter recorded on June 7, 2017 from 3:32:30 p.m. to
9 4:09:26 p.m.

10

11 06/12/17

S / Terry L. DeMarco

12 Date

Terry L. DeMarco, AD/T 566

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